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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/262,658

03/04/1999

JOSHUA A. ROSENTHOL

UV-81

9736

75563 7590 12/31/2009

ROPES & GRAY LLP
PATENT DOCKETING 39/361
1211 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-8704

EXAMINER

SALCE, JASON P

ART UNIT

PAPER NUMBER

2421

MAIL DATE

DELIVERY MODE

12/31/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/262,658	Applicant(s) ROSENTHOL ET AL.	
	Examiner Jason P. Salce	Art Unit 2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-113 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-113 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 9/15/2009 have been fully considered but they are not persuasive.

In regards to independent claims 1 and 78, Applicant argues that Graves and Roth fail to teach providing an option with the interactive television program guide for the user to select a programming theme from a list of programming themes and a level of interest in that selected programming theme. Applicant further argues that Graves only shows a screen allowing a user to select a question pertaining to a particular program and to answer the question using ratings between 1 and 10. Applicant further notes that selecting a question pertaining to a particular program and answering it using ratings is not the same as selecting a programming theme from a list of programming themes and a level of interest in that selected programming theme and that Graves does not teach programming themes. The Examiner respectfully disagrees.

As previously discussed, Figure 5 shows a list of programming themes for a program viewed by the user and further allows a user to select both a programming theme ("**Action Level**" or "**Dialog**") and a level of interest ("**Rating**"). Applicant characterizes Figure 5 in Graves as simply presenting a question to the user, wherein the user provides ratings about the program in question, however, Graves clearly teaches a list of programming themes for the programming (**the program in question**) and assigning a rating (**level of interest**) to each programming theme (**see Figure 5**). The Examiner further notes that "Action", "Romance" and "Violence" are three examples

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of programming themes (**as shown in Figure 5**) and that Applicant provides no explanation as to how these fields do not represent programming themes. The Examiner also notes that while the rating assigned to each programming theme in Figure 5 represents how much Action or Violence was found in the viewed program, such a rating is used to define a level of interest for the user in order to provide a more preferred list of programming for the user to choose from.

Applicant further argues that Roth does not cure the deficiencies of Graves because Roth does not discuss anything related to programming theme and only teaches ranking computer program menu items. The Examiner respectfully disagrees.

While Roth teaches ranking computer program menu items, Graves teaches providing programming themes and further providing a level of interest. However, Graves teaches not level of modification of the programming themes based on the selected theme and level of interest, while Roth discloses providing an order on how ranked menu items (**such as the programming themes of Graves in Figure 5**) should be displayed. Therefore, using the display ranking feature of Roth, Figure 5 of Graves could be continuously modified after a user adjusts the value of each programming theme to display the highest ranked programming theme ("**Action**") at the top of the list and the lowest ranked programming theme ("**Romance**") at the bottom of the list providing Graves with the improvement of instructing the menu management mechanism (**the system of Graves that draws the user interface of Figure 5**) to maintain a certain menu order with a given menu (**see Column 2, Lines 6-10**).

In regards to independent claim 36, Applicant argues that the references do not teach providing an option with an interactive television program guide for the user to select a plurality of favorite programming themes from a list of programming themes and displaying the list of programming themes in which the selected favorite programming themes are distinctively displayed. The Examiner respectfully disagrees.

Graves discloses providing an option to assign a rating to programming themes, wherein the programming themes are used to provide favorite programs to the user. Therefore the programming themes selected by the user in Graves are favorite programming themes (**see Column 8, Line 32 through Column 9, Line 42 for selecting favorite programming themes in Figure 5 and comparing those values with preassigned program values to determine a list of favorite programs**). The Examiner notes that while the claims state that a programming theme is a favorite programming theme, the claims make no distinction between a programming theme being a favorite because the programming theme is used to determine a list of favorite programs or if the programming theme is a favorite programming theme by the user selecting a preferred/favorite programming theme at the time of selection (**for example in Figure 5 of Graves**).

In regards to the references failing to teach distinctively displaying the favorite programming themes, see the Examiner's rebuttal above regarding Roth disclosing reordering the list of favorite programming themes based on the assigned rating, which clearly teaches distinctively displaying the favorite programming themes of Graves based on a user's selecting menu items rankings.

In regards to independent claims 67 and 104, Applicant argues that the references fail to teach alternating between a first and second list or selecting programming themes from a first list and creating a second list. The Examiner respectfully disagrees.

The Examiner notes that the claims fail to recite "alternating between a first or a second list" in the independent claims, therefore the argument is moot.

In regards to Graves and Roth failing to teach displaying a second list after selection of programming themes and a level of interest in a first list, see the Examiner rebuttal of claims 1 and 78 above and note that in claim 1 an existing list of programming themes are "modified", therefore a list of programming of themes that are modified (**in the manner described in Roth**) would clearly create a new (**second**) list containing the modified programming themes.

In regards to independent claims 23, 30 and 43, Applicant argues that the references fail to teach providing an option with an interactive program guide for the user to select: a favorite programming theme from a list of programming themes (claim 23), a programming theme for which the user has a low level of interest from a list of programming themes (claim 30), or a programming theme from a list of programming themes and a level of interest in that selected programming theme (claim 43).

In regards to claim 23, see the Examiner's rebuttal of independent claim 36 above.

In regards to claim 30, see Figure 5 and Column 8, Line 32 through Column 9, Line 42 for assigning values to programming themes that represent high and low levels of interest that are used to create a list of favorite programs to the viewer (**and further note the Examiner's rebuttal of independent claims 1 and 78 above**).

In regards to claim 43, see the Examiner's rebuttal of independent claims 1 and 78 above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-13, 15-16, 18-36, 38-43, 45-51, 53-57, 59-60, 62-72, 74-84, 86-90, 92-93, 95-98, 100-102, 104-109 and 111-112 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves et al. (U.S. Patent No. 5,410,344) in view of Roth (U.S. Patent No. 6,583,797).

Referring to claim 1, Graves discloses an interactive television program guide system in which an interactive television program guide is at least partially implemented on user equipment of a user (**see Figures 2 and 5**).

Graves also discloses means for displaying a list of programming themes (**see Figure 5**).

Graves also discloses means for providing an option with the interactive television program guide for the user to select a programming theme from the list of programming themes (**see Figure 5 for allowing a user to select one of the themes**) and a level of interest in that selected programming theme (**see Figure 5 for selecting a level of interest in the form of a score between 1 and 10**).

Graves fails to teach means for modifying the list of programming themes based on the selected theme and level of interest.

Roth discloses displaying a list of programming themes and selecting rankings for each programming theme (**see Figure 11-12**). Roth further discloses means for modifying the list of programming themes based on the selected theme and level of interest (**see Figures 11-12 and Column 15, Line 60 through Column 17, Line 32**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the list of ranked programming themes, as taught by Graves, using the programming theme display ranking process, as taught by Roth, for the purpose of providing the improvement of instructing the menu management mechanism to maintain a certain menu order within a given menu (**see Column 2, Lines 6-10 of Roth**).

Referring to claim 2, Graves discloses that the means for providing the option for the user to select a programming theme and a level of interest in that programming theme comprises providing an option for the user to designate a high level of interest in the selected programming theme (**see Figure 5 for an option to select an interest**

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level of 8, 9 or 10 which represents a high level of interest of the programming theme).

Referring to claim 3, Roth discloses that the means for modifying the list of programming themes comprises means for displaying the list of programming themes comprises means for displaying the list of programming themes with the selected programming theme at the top of the list **(see Figures 11-12 and Column 16, Lines 9-36).**

Referring to claim 4, Roth discloses that the means for modifying the list of programming themes comprises means for displaying the list of programming themes comprises means for shifting the remaining programming themes to a lower position on the list **(see the rejection of claim 3 where selecting an item from the bottom of the list to appear at the top of the list inherently places the remaining items at lower positions in the list).**

Referring to claim 5, Graves discloses means for providing an option to select a programming theme from the list as a search criterion for searching program listings data **(see Column 9, Lines 35-42 for the selected programming themes that are ranked by the viewer are used to search for a subset of program listings data to display to the viewer).**

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Referring to claim 6, Graves discloses means for searching the program listings data for programming satisfying the search criterion in a database maintained by the interactive television program guide (**see Column 9, Lines 35-42 for the selected programming themes that are ranked by the viewer are used to search for a subset of program listings data to display to the viewer**).

Referring to claim 7, Graves discloses that the interactive television program guide maintains the database on the user equipment (**see the rejection of claim 6**).

Referring to claim 9, Graves discloses means for displaying a list of programming satisfying the search criterion (**see Column 9, Lines 35-42 for the selected programming themes that are ranked by the viewer are used to search for a subset of program listings data to display to the viewer**).

Referring to claim 10, Graves discloses that the means for providing the option for the user to select a programming theme and a level of interest in that programming theme comprises providing an option to designate a low level of interest in the selected programming theme (**see Figure 5 for an option to select an interest level of 1, 2 or 3 which represents a low level of interest of the programming theme**).

Referring to claim 11, Roth discloses that the means for modifying the list of programming themes comprises means for displaying the list of programming themes

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with the selected programming theme at the bottom of the list (**see the rejection of claim 3 where selecting an item from the bottom of the list to appear at the top of the list inherently places the remaining items at lower positions in the list**).

Referring to claim 12, Graves discloses that the means for modifying the list of programming themes comprises means for deleting the selected programming theme from the list of programming themes (**see Column 6, Lines 46-49 for when themes are ranked lower than the ten items to be displayed from the preferred viewing file, the lowest ranked themes are removed from the list**).

Referring to claim 13, Roth discloses that the means for providing an option for the user to select a programming theme and a level of interest in that programming theme comprises means for numerically designating a position for the selected programming theme in the list of programming themes (**see the rejection of claim 3**).

Referring to claim 15, Graves discloses means for searching program listings data stored in a database maintained by the interactive television program guide while using the selected programming theme as a search criterion (**see Column 9, Lines 35-42 for the selected programming themes that are ranked by the viewer are used to search for a subset of program listings data to display to the viewer**).

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Referring to claim 16, Graves discloses that the interactive television program guide maintains the database on the user equipment (**see Figure 2**).

Referring to claim 18, see the rejection of claim 9.

Referring to claim 19, Graves discloses means for storing the selected programming theme and level of interest (**see the personal preference file 32a in Figure 2 and Column 6, Lines 5-16 for storing the selected programming theme and level of interest**).

Referring to claim 20, Graves discloses that the user equipment is user personal computer equipment (**see Figure 2**).

Referring to claim 21, Graves discloses that the user equipment is user television equipment (**see Figure 2**).

Referring to claim 22, Graves discloses a server located at a television distribution facility on which at least a portion of the interactive television program guide is implemented (**see content coder 12a in server 12 and system headend 14 and Column 4, Lines 6-21**).

Referring to claim 23, see the rejection of claims 1 and 3.

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Referring to claim 24, see the rejection of claim 4.

Referring to claim 25, see the rejection of claims 5-6.

Referring to claims 26-29, see the rejection of claims 9 and 19-21, respectively.

Referring to claim 30, see the rejection of claims 1, 4 and 11.

Referring to claim 31, see the rejection of claim 12.

Referring to claim 32, Graves discloses providing an option for restoring the deleted programming theme to the theme list (**see Column 6, Lines 39-43 for restoring a program to the preferred viewing file 30a based on the higher ranking of the program**).

Referring to claim 33, Graves discloses storing the selected programming theme in a non-volatile memory device (**see Figure 2 for storing the preferred viewing file in memory device 30a**).

Referring to claims 34-35, see the rejection of claims 20-21, respectively.

Referring to claims 36, 38 and 39-42, see the rejection of claims 1, 6, 9, 33 and 20-21, respectively.

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Referring to claim 43, see the rejection of claim 1 and further note that the selected programming themes and level of interest are stored in a preference profile (**see stored profile 30a in Figure 2 and Column 6, Lines 12-16**).

Referring to claims 45-51, see the rejection of claims 1-7, respectively.

Referring to claims 53-57, see the rejection of claims 9-13, respectively.

Referring to claims 59-60 and 62-66, see the rejection of claims 15-16 and 18-22, respectively.

Referring to claim 67, see the rejection of claim 1 and further note that when a viewer selects preferred themes in Figure 5, the list is updated according to Column 6, Lines 5-52 thereby creating a second list shown in Roth. Further note that by changing from a first to a second list and further being able to change the priority display values at any time by the user, as taught by Roth, Roth therefore provides a means for alternating between display the first list of programming and the second list of programming themes.

Referring to claim 68, see the rejection of claim 67.

Referring to claims 69-72 and 74-77, see the rejection of claims 2, 5-7, 9 and 19-21, respectively.

Referring to claims 78-84, 86-90, 92-93 and 95-96, see the rejection of claims 1-7, 9-13, 15-16 and 18-19, respectively.

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Referring to claims 97-98 and 100-101, see the rejection of claims 17, 1, 6 and 9, respectively.

Referring to claim 102, Graves discloses providing an option for creating a preference profile with which the selected programming theme and the respective level of interest are associated (**see Figure 5 and Column 6, Lines 5-16 for a user interface used to create a preferred viewing file 30a in Figure 2**).

Referring to claims 104-109 and 111-112, see the rejection of claims 67-72 and 74-75.

Claims 8, 14, 17, 37, 44, 52, 58, 61, 73, 85, 91, 94, 99, 103, 110 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves et al. (U.S. Patent No. 5,410,344) in view of Roth (U.S. Patent No. 6,583,797)

Referring to claim 8, Graves and Roth disclose all the limitations of claim 6, as well as a server located at a television distribution facility on which at least a portion of the interactive television program guide is implemented (**see Figure 2 for the content coding server and headend**), but fail to teach that the interactive television program guide maintains the database on the server.

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The Examiner takes Official Notice to the fact that a television system is capable of recording viewer selections from a program guide and transmitting the selected information to the headend to be processed and used to configure the program guide.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the headend, as taught by Graves and Roth, using the viewer selection processing functionality at the headend, as taught by the Examiner's Official Notice, for the purpose of requiring less processing functionality at the viewer's client device thereby requiring a cheaper television client device.

Referring to claim 14, Graves and Roth disclose all of the limitations of claim 1, but fail to teach displaying the selected programming theme in a predetermined color.

The Examiner takes Official Notice to the fact that a television system can display a selected programming theme in a predetermined color.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the display screen, as taught by Graves and Roth, to include color coding, as taught by the Examiner's Official Notice, for the purpose of clearly distinguishing programs by theme on the EPG, thereby providing a user friendly program guide that allows a user's to quickly make program selections.

Referring to claim 17, see the rejection of claim 8.

Referring to claim 37, see the rejection of claim 14.

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Referring to claim 44, Graves and Roth disclose all of the limitations of claim 1, but fail to teach multiple profiles, where the system provides an option of selecting which of the profiles to make active.

The Examiner takes Official Notice to the fact that television receivers store multiple profiles and that based on which user (Mom, Dad, Kids) are using the television receiver, the profile for that user is activated based on a user selectable option.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the television program guide system, as taught by Graves and Roth, using the multiple profiling system, as taught by the Examiner's Official Notice, for the purpose of allowing different users to receive preferred television programming.

Referring to claim 52, see the rejection of claim 8.

Referring to claim 58, see the rejection of claim 14.

Referring to claim 61, see the rejection of claim 17.

Referring to claim 73, see the rejection of claim 8.

Referring to claims 85, 91 and 94, see the rejection of claim s8, 14 and 17, respectively.

Referring to claim 99, see the rejection of claim 14.

Referring to claim 103, see the rejection of claim 44.

Referring to claims 110 and 113, see the rejection of claim 73.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason P Salce/
Primary Examiner, Art Unit 2421

Jason P Salce
Primary Examiner
Art Unit 2421

December 23, 2009